



Council Agenda Report

From: Thomas Frutchey, City Manager

Subject: Council Compensation

Date: October 17, 2017

Facts

1. Paso Robles Councilmembers currently receive a salary of \$600 per month. As the Mayor has additional duties and attends a broad number of additional events each month, representing the full Council and the City, the voters approved an additional \$200 per month for the Mayor, for a total of \$800 per month.
2. If a Councilmember invests an average of 20 hours per week on City business, this amounts to a wage rate of approximately \$6.92 per hour. If the Mayor invests an average of 30 hours per week on City business, this amounts to a wage rate of approximately \$6.15 per hour. Each of these is less than half the minimum hourly wage in California.
3. Those amounts were last set effective December 2006 (see Attachment 2). If the salaries had been increasing since then to match the consumer price index (CPI), each Councilmember would now receive a monthly salary of \$732 and the Mayor \$973. An automatic adjustment is not legal in California, however, even if only to match the rate of inflation. Councilmembers may also not be paid an hourly wage (see Attachment 1).
4. For those cities up to and including 35,000 in population, such as the City of Paso Robles, state law specifies that Councilmember salaries may be established at an amount up to and including \$300 per month. Council salaries may be increased beyond the amount provided by state law, but the amount of the increase cannot be more than five percent (5%) for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment was enacted.
5. An ordinance changing Council compensation does not apply to a Councilmember during his/her term of office, but does not prevent the adjustment of compensation whenever one or more members of the Council becomes eligible for a salary increase due to staggered terms of office. Therefore, if the Council approves and adopts an ordinance changing Council compensation, the change in salary could take effect for all Councilmembers in December 2018, following the next municipal election.
6. Since by December 2018 the Council will not have had a salary increase in the last 12 years, it could adopt an ordinance effectively increasing salaries by as much as 60% ($12 \times 5\% = 60\%$). (As noted by the City Attorney in Attachment 1, the increases may not be compounded.) Thus, Council-member salaries could be increased starting December 2018 to any amount up to \$960 per month (equivalent to an hourly rate of \$11.08, assuming an average of 20 hours of City business per week); there appear to be no restrictions in how much the Mayor's additional \$200 in monthly salary could be increased. If the Mayor's additional \$200 were not increased, then the Mayor's total monthly salary would be \$1,160 (equivalent to an hourly rate of \$8.92, assuming an average of 30 hours of City business per week).
7. Any payment a Council Member receives for service on a commission, committee, board, or similar body on which the Council Member serves counts toward the Councilmember's maximum permitted compensation, unless specifically authorized by state law.

8. Alternatively, the Council can submit to the electorate for majority approval a ballot measure for a: a). Councilmember salary increase; b). Mayoral salary increase (for the \$200 portion); or c). both.

Options

1. Take no action;
2. Direct the City Manager and City Attorney to: prepare an ordinance for Council consideration, increasing Councilmember and Mayoral salaries by an amount not to exceed 60% greater than current salaries; and prepare a policy directing the City Manager and City Attorney to bring a similar ordinance to the Council every two years, in order to keep salaries on pace with inflation or some other appropriate index or standard.
3. Provide alternative direction to staff;

Analysis and Conclusions

Current Councilmember and Mayoral compensation for neighboring cities is provided below:

City	Councilmember	Mayor
Santa Maria	\$ 1,313	\$ 1,563
San Luis Obispo	1,200	1,500
Paso Robles	600	800
Grover Beach	600	750
Atascadero	600	750
Pismo Beach*	515	815
Morro Bay	500	700
Arroyo Grande	405	405

*Rounded to the nearest dollar.

By directing the City Manager and City Attorney to bring a similar ordinance to the Council every two years, in order to keep pace with inflation, it avoids the current situation, where salaries have not been increased for 12 years, which makes the approval of an appropriate increase harder for the Council, since it is a larger increase.

Residents do not run for Council because of the salary; similarly, Councilmembers do not serve because of the salary they receive. However, the City offering a salary that is below minimum wage can clearly discourage some residents from running for Council. We do not want to become a city where only the well-to-do can afford to serve.

Fiscal Impact

None for FY 2017-18. If Councilmember salaries were increased by the full 60%, but the Mayor’s additional salary was kept at \$200 per month, then the increased cost to the City in FY 2018-19 would be \$10,800, with a total annual increase of \$21,600 thereafter.

Recommendation

Direct the City Manager and City Attorney to: 1) prepare an ordinance for Council consideration, increasing Councilmember and Mayoral salaries by 60% over current salaries, which were last increased in 2006; and 2) prepare a policy directing the City Manager and City Attorney to bring a similar ordinance to the Council every two years, in order to keep salaries on pace with inflation or some other appropriate index or standard.

Attachments

1. Memo from City Attorney, dated 10-7-17
2. 2006 Ordinance authorizing last increase in salaries



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Memorandum

To: Thomas Frutchey, City Manager
From: Pamela Thompson, Of Counsel, Best Best & Krieger
Date: October 12, 2017
Re: City Council Compensation

Pursuant to the City Manager’s request, please find our responses to questions regarding city council compensation:

Facts

Paso Robles is a general law city. The mayor is directly elected. The last time city council salaries were increased was eleven (11) years ago in 2006, to \$600 per month. In conformance with law, the mayor receives an additional \$200 in salary, approved by the voters, for a total of \$800 per month. The next general election is November 2018.

Issues and Law

1. **May city council members be paid on an hourly basis?**

No. City council members may not be paid on an hourly basis. General law cities must follow the California Government Code (“Code”) statutory requirements for paying council members for their service. The Code provides that council members may be paid a “salary” and how “salary” adjustments may be made. (See generally Cal. Govt. Code §36516)

Following the City of Bell controversy, a number of Code provisions pertaining to salary and related benefits were reviewed, modified and/or amended. It is recommended that these statutes be strictly



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construed in favor of the city and public, not the public official. (*City Council Salary and Benefits*, League of California Cities Sep. 2011 Conference, Brian Libow, City Attorney, San Pablo, page 1).

Although we have not found a provision or attorney general opinion expressly stating that council members may not be paid hourly, the plain words of the Code are that they should be paid a “salary,” which is typically understood to mean fixed compensation paid on a regular basis.

To read the statute differently requires giving new rights to council members not specified in the Code such as overtime and other labor rights typically meant to protect laborers and wage earners, not executive management.

2. What is the process to modify city council compensation?

The Code establishes a range for city council salary with a ceiling based on a city’s population and which amount may be increased by ordinance or by a majority vote of the electorate. (Cal. Gov’t Code §36516) The Code further specifies both the maximum increase permitted and the frequency of such increases.

If an increase to city council salary is authorized by *ordinance*, the amount may not exceed 5% for each calendar year, “from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted....”. (Cal. Gov’t Code §36516(a)(4)) Pursuant to an Attorney General opinion, the increase may not be compounded – it is one calculation based on the total number of years, not 5% applied to the first year and then another 5% applied to that number. (See Govt. Code §36516(a)(4)); 89 Ops.Cal.Atty.Gen. 159 (2006)) Thus, if a council’s salary is \$100 per month and there has been no increase in five years, it may adopt an ordinance multiplying 5 years by 5% making 25% and a maximum salary of \$125 per month.

As to frequency, the law is not completely clear on what constitutes a calendar year. There are a number of possible interpretations but perhaps the most appropriate reading is to calculate increases from the effective date of the last increase to the effective date of the next increase. (*City Council Salary and Benefits*, League of California Cities Sep. 2011 Conference, Brian Libow, City Attorney, San Pablo, page 3).

Alternatively, a council may submit its proposal for a salary increase as a *measure* to the electorate for majority approval:

“If a majority of the electors voting at the election favor it, all of the council members shall receive the salary specified in the election call. The salary of council members may be increased beyond the amount provided in this section or decreased below the amount in the same manner.” (Cal. Govt. Code §36516(b))

In addition to his or her city council salary, a directly elected mayor may receive additional compensation for performing duties as mayor. The electorate or the city council may set the amount of the mayor's additional compensation at whatever level it chooses, as follows:



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“That additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election.” (Cal. Govt. Code §36516.1)

Unlike council members, additional compensation for performing the duties of a directly elected mayor is not prohibited mid-term because the extra compensation is not received as a council person. (Cal. Govt. Code §36516.1; 89 Ops.Cal.Atty.Gen. 159 (2006) There appear to be no state restrictions as to the amount of increase that can be applied to the \$200.

Certain benefits do not count toward calculating salary including, “retirement, health and welfare, and federal social security benefits” as well as reimbursements for “actual and necessary expenses pursuant to Section 36514.5” (Cal. Govt. Code §36516(d) and (e)). Finally, city council members generally may not receive additional compensation in excess of these limits for service on other city related boards and committees unless another statute authorizes it. In that case, the limit is \$150 per month for each. (Cal. Gov’t Code §35616(c))

3. May a city council’s salary be set with an automatic adjustment like a CPI?

No. The law specifically prohibits an automatic adjustment:

“No ordinance shall be enacted or amended to provide automatic future increases in salary.” (Cal. Gov’t Code §36516(4))

4. What is the effective date of a city council salary increase?

New increases take effect at the beginning a new term of office and not during the term of a council member’s term of office, but that effectively changes the salary of *all* members at that time:

“A change in compensation does not apply to a council member during the council member's term of office. This prohibition shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of the city council becomes eligible for a salary increase by virtue of the council member beginning a new term of office.” (Cal. Govt. Code §36516.5)

ORDINANCE NO. XXX N.S.

**AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING SECTION 2.40.030 D OF THE CITY'S MUNICIPAL CODE (CITY
COUNCIL MEMBER COMPENSATION)**

WHEREAS, Government Code section 36516 provides that a City Council may enact an ordinance setting the salary for each member of the City Council, the amount of which shall be based upon population; and

WHEREAS, the City Council adopted Ordinance No. 514 N.S. on March 18, 1986, setting City Council compensation at \$300 per month; and

WHEREAS, Paso Robles Municipal Code section 2.40.030 D, "Salary -- Amounts" provides that each City Councilmember shall receive a salary of \$300 per month; and

WHEREAS, on April 18, 2000, the City Council adopted Resolution No. 00-72, which recited the fact of the General Municipal Election held on March 7, 2000 and declared the election result that, among other things, a majority of voters voted in favor of the Mayor receiving compensation of \$200 a month in addition to what he receives as a Council Member, as permitted by Government Code section 36516.1; and

WHEREAS, Government Code section 36516(c) provides that City Council salaries may increase by up to five (5) percent for each calendar year from the operative date of the last adjustment of the salary in effect; and

WHEREAS, the time, commitment and expense of serving on the Council has increased significantly, but the monthly compensation for Council Members has not been adjusted since 1986; and

WHEREAS, increasing the Council Member compensation from \$300 per month to \$600 per month and increasing the Mayor's compensation from \$500 per month to \$800 per month amounts to an increase of less than five percent compounded biennially since 1986; and

WHEREAS, the Attorney General has concluded that the "effective date of an adjustment in the salaries of city council members is delayed pursuant to California Government Code section 36516.5 until one council member commences a new term of office" (54 Ops. Cal. Atty. Gen 112, 6-30-71); and

WHEREAS, the next general municipal election is to be held on November 7, 2006;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 2.40.030.D, "Salary -- Amounts" of the Paso Robles Municipal Code, is amended to read as follows:

"City Council members shall receive six hundred dollars per month and the Mayor shall receive eight-hundred dollars per month."

Section 2. Effective Date. The compensation rates shall go into effect for all City Council members, pursuant to Government Code section 36516.5, when one or more members of the City Council become eligible for a salary increase by virtue of that member beginning a new term of office following the November 7, 2006 general municipal election.

Section 3. Publication. This ordinance shall be published once fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

Introduced at a regular meeting of the City Council held on June 6, 2006, and passed and adopted by the City Council of the City of El Paso de Robles on the 5th day of July 2006 by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Mayor Frank R. Mecham

ATTEST:

Deborah D. Robinson, Deputy City Clerk